

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHANNON O. MURPHY, SR.,

Plaintiff,

v.

FEDERAL BUREAU OF
INVESTIGATION,

Defendant.

No. 2:21-cv-00141-TLN-CKD PS

ORDER GRANTING IFP REQUEST AND
DISMISSING WITH LEAVE TO AMEND

Plaintiff proceeds pro se in this action. This matter was referred to the undersigned by Local Rule 302(c)(21).

Plaintiff filed an application in support of his request to proceed in forma pauperis. (ECF No. 2.) Plaintiff's application makes the showing required by 28 U.S.C. § 1915.

Pursuant to 28 U.S.C. § 1915(e), the court must screen every in forma pauperis proceeding, and must order dismissal of the case if it is "frivolous or malicious," "fails to state a claim on which relief may be granted," or "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B); Lopez v. Smith, 203 F.3d 1122, 1126-27 (2000). In performing this screening, the court liberally construes a pro se plaintiff's pleadings.

1 See Eldridge v. Block, 832 F.2d 1132, 1137 (9th Cir. 1987) (citing Boag v. MacDougall, 454
2 U.S. 364, 365 (1982) (per curiam).

3 I. ALLEGATIONS OF THE COMPLAINT

4 The complaint is almost devoid of factual allegations. Plaintiff alleges he was the victim
5 of a covert assault by the FBI or an agent of the FBI and that he suffered unspecified injury. (ECF
6 No. 1 at 2.) Plaintiff further alleges unspecified defendants failed to provide a diagnosis at an
7 appointment, and that the Superior Courts of California were guilty of fraud. (Id.) The complaint
8 contains numbered causes of action for negligence, assault and breach of contract. (Id.)

9 II. PLEADING STANDARDS

10 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
11 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
12 action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555–57 (2007). “Threadbare recitals of
13 the elements of a cause of action, supported by mere conclusory statements do not suffice.”
14 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). A claim upon which the court can grant relief has
15 facial plausibility. Twombly, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff
16 pleads factual content that allows the court to draw the reasonable inference that the defendant is
17 liable for the misconduct alleged.” Iqbal, 556 U.S. at 678. When considering whether a complaint
18 states a claim upon which relief can be granted, the court must accept the allegations as true,
19 Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007), and construe the complaint in the light most
20 favorable to the plaintiff. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

21 III. THE COMPLAINT HAS A JURISDICTIONAL DEFECT AND FAILS TO 22 STATE A CLAIM

23 A. Subject Matter Jurisdiction

24 Plaintiff purports to bring claims for damages against an agency of the United States, the
25 FBI, as the sole defendant. Claims against the United States and its agencies are generally barred
26 by the doctrine of sovereign immunity. See Sierra Club v. Whitman, 268 F.3d 898, 901 (9th Cir.
27 2001). A lawsuit against an agency of the United States or against an officer of the United States
28 in his or her official capacity is considered an action against the United States. See Id.; Balser v.

1 Dep't of Justice, Office of U.S. Tr., 327 F.3d 903, 907 (9th Cir. 2003) (holding that sovereign
2 immunity protects the Department of Justice). As a sovereign, the United States is immune from
3 suit unless it has waived immunity. United States v. Mitchell, 463 U.S. 206, 212 (1983).

4 The Federal Tort Claims Act ("FTCA") provides a limited waiver of the government's
5 sovereign immunity for certain tort claims "caused by the negligent or wrongful act or omission
6 of any employee of the Government while acting within the scope of his office or employment."
7 28 U.S.C. § 1346(b)(1). As a jurisdictional prerequisite, however, the FTCA bars claimants from
8 bringing suit in federal court until they have exhausted their administrative remedies. McNeil v.
9 United States, 508 U.S. 106, 113 (1993). Pursuant to 28 U.S.C. § 2675(a), an action shall not be
10 instituted upon a claim against the United States for money damages for an employee's
11 negligence unless the claimant has first presented the claim to the appropriate federal agency and
12 his claim was finally denied by the agency in writing and sent by certified or registered mail. 28
13 U.S.C. § 2675(a). A lawsuit filed prior to the exhaustion of a claimant's administrative claim is
14 premature and must be dismissed. McNeil, 508 U.S. at 113.

15 Plaintiff does not state anywhere in the complaint that he is proceeding under the FTCA.
16 Plaintiff further does not allege that he has exhausted available administrative remedies so as to
17 bring a claim under the FTCA. Accordingly, this court lacks subject matter jurisdiction over
18 plaintiff's purported claims against the FBI.

19 **B. Failure to Comply with Rule 8**

20 In addition to the jurisdictional defect, the complaint fails to allege a "plain statement of
21 the claim" in a "simple, concise, and direct" manner. Fed. R. Civ. P. 8(a)(2) and (d)(1); see also
22 McHenry v. Renne, 84 F.3d 1172, 1178-80 (9th Cir. 1996) (affirming dismissal of complaint
23 where "one cannot determine from the complaint who is being sued, for what relief, and on what
24 theory, with enough detail to guide discovery"). In order to give the defendant fair notice of the
25 plaintiff's claim and the grounds on which it rests, a plaintiff must allege with at least some
26 degree of particularity overt acts by specific defendants which support the claims. See Kimes v.
27 Stone, 84 F.3d 1121, 1129 (9th Cir. 1996).

28 Plaintiff's vague and conclusory allegations do not satisfy the requisite standard. Plaintiff

1 states he was injured at the hands of an agent of the FBI. Plaintiff further alleges he suffered an
2 assault but fails to describe what happened, such as when and where the assault occurred or who
3 committed the assault. In sum, the complaint fails to plead adequate facts to support any of the
4 stated cause of action.

5 **C. Guidelines for a First Amended Complaint**

6 Because plaintiff has failed to provide a basis for jurisdiction and has failed to comply
7 with the requirements of Fed. R. Civ. P. 8(a)(2), the complaint must be dismissed. The court will,
8 however, grant leave to file an amended complaint. See Lucas v. Dep't of Corr., 66 F.3d 245, 248
9 (9th Cir. 1995) ("Unless it is absolutely clear that no amendment can cure the defect . . . a pro se
10 litigant is entitled to notice of the complaint's deficiencies and an opportunity to amend prior to
11 dismissal of the action.").

12 If plaintiff elects to file an amended complaint, it shall be clearly captioned "First
13 Amended Complaint" and shall cure the jurisdictional deficiencies identified herein. In any
14 amended complaint, plaintiff must allege with at least some degree of particularity overt acts
15 which a defendant or defendants engaged in that support plaintiff's claim. Jones v. Community
16 Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984).

17 Plaintiff is informed that Local Rule 220 requires that an amended complaint be complete
18 in itself without reference to any prior pleading. As a general rule, an amended complaint
19 supersedes the original complaint. Once plaintiff files an amended complaint, the original
20 pleading no longer serves any function in the case. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
21 1967). Therefore, in any amended complaint, as in an original complaint, each claim and the
22 involvement of each defendant must be sufficiently alleged.

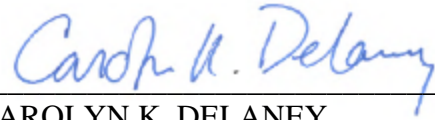
23 Finally, although failure to file an amended complaint in accordance with this order will
24 result in a recommendation that this action be dismissed, nothing in this order requires plaintiff to
25 file a first amended complaint. If plaintiff is unable or unwilling to cure the complaint's
26 deficiencies, then plaintiff may file a notice of voluntary dismissal.

27 **IV. CONCLUSION**

28 In accordance with the above, IT IS HEREBY ORDERED that:

1. Plaintiff's request to proceed in forma pauperis (ECF No. 2) is granted;
2. Plaintiff's complaint is dismissed; and
3. Plaintiff is granted thirty days from the date of service of this order to file an amended complaint that complies with the requirements of the Federal Rules of Civil Procedure and the Local Rules of Practice; the amended complaint must bear the docket number assigned this case and must be labeled "Amended Complaint"; failure to file an amended complaint in accordance with this order will result in a recommendation that this action be dismissed.

Dated: March 16, 2021



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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